

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRISTAR INVESTORS, INC.,

Plaintiff,

v.

**AMERICAN TOWER CORPORATION,
et al.,**

Defendants.

CIVIL ACTION NO. 3:12-CV-499-M

AMERICAN TOWER, LLC, et al.,

Counter-Plaintiffs,

v.

TRISTAR INVESTORS, INC., et al.,

Counter-Defendants.

**JOINT MOTION TO CHANGE SCHEDULING ORDER DEADLINES,
AND STIPULATION REGARDING AUTHENTICATION OF DOCUMENTS**

Pursuant to Paragraphs 9 and 14 of the Amended Scheduling Order (Doc. 196), the parties hereby jointly move to change the following deadlines in Paragraphs 8, 9, and 11 of the Scheduling Order (as amended by the parties' Joint Notices to the Court dated July 11, 2013 and July 25, 2013) as follows:

DESCRIPTION	NEW DEADLINE	OLD DEADLINE	PARA.
Deadline for disclosure of exhibit lists pursuant to Rule 26(a)(3)(A)(iii), and a marked set of exhibits.	December 3, 2013	January 7, 2014	8, 11(a)3
Deadline to serve and file a list disclosing any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii), if any.	December 16, 2013	January 14, 2014	8
Deadline for disclosure of deposition designations pursuant to Rule 26(a)(3)(A)(ii).	December 3, 2013	January 7, 2014	8, 11(a)3
Deadline for parties to file a list of witnesses who may be called by each party in its case in chief.	December 17, 2013	January 7, 2014	8, 11(a)2
Deadline for parties' counter-designation of deposition testimony for the purpose of the rule of completeness pursuant to FRE 106 and/or Rule 32(a)(4).	December 20, 2013	n/a	n/a
Deadline to serve and file a list disclosing any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii).	January 7, 2014	January 14, 2014	8

The parties also agreed to extend the fact discovery deadline for the sole and limited purpose of extending their time to take depositions to address objections (if any) to the admissibility of documents timely disclosed pursuant to Rule 26(a)(3)(A)(iii), as follows:

DESCRIPTION	NEW DEADLINE	OLD DEADLINE	PARA.
Fact discovery	January 10, 2014 (solely for the limited purpose of extending the parties' time to take depositions addressing objections (if any) to the admissibility of documents timely disclosed pursuant to Rule 26(a)(3)(A)(iii))	August 19, 2013	9

Basis for Joint Agreed Modification of Certain Scheduling Order Deadlines. In support of the joint agreed modifications, the parties state that all of the new suggested deadlines, other than the fact discovery deadline extension, are earlier than as currently contained in the scheduling order.

As to the extended fact discovery deadline – for the limited purpose of addressing evidentiary foundation objections (if necessary) – the parties have agreed that, in order to avoid the unnecessary expense of deposing multiple records custodians and other witnesses to provide for the evidentiary basis for documents that may never be used as exhibits at trial, the parties would instead disclose their witness lists, exhibits, and witnesses that will be called live at trial, at an earlier time than as contained in the current scheduling order.

These earlier disclosure dates call for the identification of the exhibits each intends to use at trial (from the millions of pages of documents produced in this matter) earlier than contained in the present scheduling order. These earlier disclosure dates will allow the parties to review the exhibits identified by the other party, and either (i) agree to the business record or other evidentiary foundation of the exhibits so identified; or (ii) in the alternative, allow the party that seeks to use the exhibit at trial to take the deposition(s) of the appropriate witnesses necessary to address any objections to the business record or other evidentiary foundation that may have been raised by the opposing party after their review of the exhibits identified.

Agreement concerning the designation of witnesses to be called “live.” The parties have agreed and now stipulate that, on or before November 18, 2013, they will identify which witnesses under their control that they will call live (i.e., not through deposition) at trial. The parties further agree and stipulate that they will make the witnesses so designated available at trial for any party to call, upon reasonable notice (not less than 48 hours). The parties agree that

no party is prohibited from calling a witness live simply because that party did not designate the witness pursuant to this paragraph, but both TriStar and American Tower agree to provide at least two names on November 18, 2013. The purpose of this agreement is to save the parties the time and trouble of designating and objecting to deposition transcripts.

Authentication Stipulation. The parties have agreed and now stipulate to the authentication, pursuant to FRE 901, of all documents produced by any party to this matter, or produced by any non-party in response to a subpoena served in this matter.

Proposed Order. A proposed Order will also be submitted for the Court's review.

AGREED:

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2013, I served a true and accurate copy of the foregoing document on all counsel of record via filing of the same with the Court's CM/ECF system.

/s/ Kyle D. Young